



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **PIEDMONT REGIONAL OFFICE**

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[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO APAC-Virginia, Incorporated Registration No. 52070**

### **SECTION A: Purpose**

This is a Consent Order issued under the Authority of Va. Code § 10.1-1309 and 10.1-1316 between the State Air Pollution Control Board and APAC-Virginia, Incorporated, for the purpose of resolving certain alleged violations of environmental laws and regulations and to provide for the payment of civil charges.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code § 10.1-1301 and 10.1-1184.
3. "Department" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Regulations" mean the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, 9 VAC 5-10-10 *et seq.*

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7. "APAC" means APAC-Virginia, Incorporated certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. "Facility" means the APAC-Virginia , Incorporated site located at 10360 Verdon Road, Hanover County, Virginia.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Permit" means the New Source Review permit issued to APAC-Virginia, Incorporated on March 11, 2004.

**SECTION C: Findings of Facts and Conclusions of Law**

1. APAC operates a portable asphalt concrete plant located at 10360 Verdon Road, Hanover County, Virginia (SIC Code 2951). This facility is the subject of the Permit issued to APAC on March 11, 2004.
2. On August 22, 2005 The Air Compliance Group, LLC conducted an initial performance test of the drum/dryer mixer exhaust as required by Condition 41 of the Permit to verify compliance with Particulate Matter emissions limits established in Condition 25 of the Permit.
3. On November 21, 2005 the Department completed review of the stack test results received on September 14, 2005. The stack test results demonstrated particulate matter emissions of 15.9lb/hr and 0.055gr/dscf. Condition 25 of the Permit limits particulate matter emissions for the drum/dryer mixer to 2.3lbs/hr and 0.04gr/dscf.
4. On December 19, 2005, PRO issued a Notice of Violation to APAC alleging potential violations of 40 CFR 60 Subpart I and Condition 25 of the Permit.

**SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1316 C, orders APAC, and APAC agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders and APAC voluntarily agrees to pay a civil charge of \$14,800 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be by check, payable to "Treasurer of Virginia", and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Payment shall include the Federal Tax Identification Number of the facility.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of APAC, for good cause shown by APAC, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein including those matters addressed in the Notice of Violation issued to APAC by DEQ on December 19, 2005. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order and subsequent actions with respect to this Order, APAC admits the jurisdictional allegations, factual findings and conclusions of law contained herein.
4. APAC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. APAC declares it has received fair and due process under the Administrative Process Act, Code 2.2-4000 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation,

and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by APAC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. APAC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. APAC must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. APAC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.Failure to so notify the Regional Director within 24 business hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and APAC. Notwithstanding the foregoing, APAC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to APAC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve APAC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or

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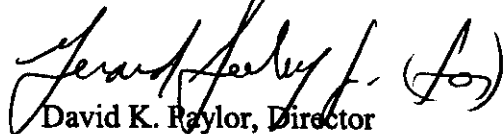
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requirement other wise applicable.

12. By its signature below, APAC Incorporated voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 14, 2006.



David K. Raylor, Director

Department of Environmental Quality

APAC voluntarily agrees to the issuance of this Order.

By: 

Carey M. Swan III

President

Date: Feb. 27, 2006

**Commonwealth of Virginia**

City/County of Prince William

The foregoing document was signed and acknowledged before me this 27<sup>th</sup> day of

February, 2006, by Carey M. Swan, who is Vice President of APAC, on behalf of the Corporation.

  
Notary Public

My commission expires: November 30, 2008

**Appendix A.**

1. **APAC shall: Conduct and pass a retest within 90 days of the effective date of this Order in accordance with Condition 41 of the March 11, 2004 NSR permit.**
2. **APAC shall: Develop and implement a comprehensive O&M plan for the air pollution control equipment and submit a copy of the plan to the Department within 45 days from the effective date of this Order.**
3. **APAC shall: Provide training to facility personnel on the operation and maintenance of the air pollution control equipment and submit to the Department a record of this training 45 days from the effective date of this Order.**